

SPECIAL CIVIL APPLICATION No 2807 of 1986

For Approval and Signature

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Versus

SHAH AGENCY THROUGH ITS PARTNERS

MR J. D. Ajmera for Petitioners
Mr. B. K. Damani for respondents.

The respondents herein instituted regular civil suit No.619 of 1985 in the court of Civil Judge (S.D.), Bhavnagar, inter alia for declaration and permanent injunction. Respondents are subscribers of telephone No.29446 at Bhavnagar. There were disputes between the respondents and the petitioner regarding excess billing

of the aforesaid telephone, and the telephone has been disconnected for non-payment of the amount of excess billing which gave rise to cause of action to the respondents for filing the aforesaid civil suit. In that suit the respondents applied for interim injunction under Order 39 praying therein for direction to the defendants to reconnect telephone No.29146 without insisting for payment of excess bill. Mandatory temporary injunction was granted by the trial court directing the petitioners to reconnect telephone No.29146. Against the said order of the trial court the petitioner preferred Misc.Civil Appeal No.81 of 1985 and the District Judge was pleased to allow the said appeal and direct the trial court to hear the application for grant of temporary injunction filed by respondents on merits. After remand, the trial court passed order on 30th October,1985 directing the respondents to deposit half of the amount of the disputed bill and on such amount being deposited the petitioner was directed to reconnect the telephone. That order of the trial court was challenged by the respondents by filing appeal before the Extra Assistant Judge, Bhavnagar. The appellate court under its order dated 10th April, 1986 allowed the appeal and directed the respondents to deposit the amount of Rs.1500 on or before 19th April, 1986 and on such amount being deposited the petitioners were directed to reconnect telephone No.29146 within 48 hours. Hence this special civil application.

2. Learned counsel for the petitioner has not disputed that the order has been passed by the trial court under Order 39 of Code of Civil Procedure, against which appeal has been filed by the respondents under Order 43 Rule 1 read with section 104 of C.P.C. It is an interlocutory order which has been passed pending disposal of the suit. This position also is not in dispute. However, learned counsel for the parties are not in a position to say whether by now the suit has been disposed of or not. Learned counsel for the petitioner also fairly conceded that against the order of the Extra Assistant Judge, Bhavnagar, made in Misc. Civil Appeal No.12 of 1986 remedy under the provisions of Section 115 of C.P.C. is available to the petitioners.

3. The counsel for the petitioners contended that the suit itself was not maintainable and as such the writ petition filed by the petitioner is maintainable. I do not find any substance in this contention. Whether suit is maintainable or not is a question to be decided by the trial court after framing issue on this question. But it is a fact that this writ petition is arising from the order made by the civil court under the ordinary law.

Miscellaneous orders passed by the trial court as well as the order passed by the appellate court in the appeal against those orders cannot be challenged by way of writ petition before this court. Reference in this respect may have to be made to the decision of the Supreme Court in the case of Swetambar Sthanakwasi JainSamiti vs. The Alleged Committee of Management, reported in JT 1996(3) SC 21 and in the case of Durga Prasad vs. Naveen Chandra, reported in JT 1996(3) SC 564. Otherwise also I do not consider it to be a fit case in which interference should be made by this court. This court on 21st May, 1986 passed the order which reads as under:

"Rule. Ad interim relief in terms of prayer B.

By way of ad interim relief it is clarified that the respondent will be entitled to reconnection on deposit of the amount directed by the trial court."

Reconnection was ordered to be made by the petitioner of telephone of the respondents on deposit of the amount as directed by the trial court. It is not the case of the respondents that they have not deposited the amount as directed by the trial court, and their telephone connection was not reconnected. The respondents would have got their telephone reconnected and consequently by now the suit itself would have been decided in normal course. It is not the case of the respondents or the petitioner that the suit is still pending. On this ground also I do not consider it proper to interfere with the matter at this stage.

4. In the result this special civil application fails and the same is dismissed. Rule discharged. No order as to costs.

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